

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 88 /2021

Dated 03-12-2021

PRESENT:

1. Shri Abhishek Chauhan

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri Vivek Arya

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s IINDIAN OIL CORPORATION LTD TC 39-V, INDIAN OIL BHAWAN, Vibhuti Khand, Gomti Nagar, Lucknow- 226010
2.	GSTIN or User ID	09AAACI1681G1ZN
3.	Date of filing of Form GST ARA-01	08.09.2021
4.	Represented by	Shri Narendra Singhvi, Advocate Shri S.K. Pathak, DGM Finance Shri Mukul Jain, Sr. Finance Manager
5.	Jurisdictional Authority-Centre	Range-I, Division- Lucknow-I
6.	Jurisdictional Authority-State	Sector-Corporate Circle, Range-Lucknow (A)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes SBIN21070900086901

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s IINDIAN OIL CORPORATION LTD, TC 39-V, INDIAN OIL BHAWAN, Vibhuti Khand, Gomti Nagar, Lucknow-226010 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACI1681G1ZN.

2. The applicant has submitted as under-

- i. The Applicant is a company registered in India and is, inter-alia, a government owned oil and gas corporation under the Ministry of Petroleum and Natural Gas. The Applicant has a refinery at Mathura.
- ii. The Applicant is, inter-alia, manufacturing and supplying goods, on which appropriate GST is charged and paid. Such goods involve Naphtha having HSN 271012, SKO and Furnace Oil having HSN 271019,
- iii. Currently, M/s. Dakshinanchal Vidyut Vitran Nigam Limited, Agra ('DVVNL') is the licensed electricity distribution company in the area of IOCL Mathura and hence, supplying the electricity to it through grid at 220KV Voltage level.

- iv. The Applicant applied for 72MW bulk power at 220KV voltage level vide letter dated 28.11.2017 to DVVNL, which was sanctioned vide letter dated 14.06.2018 from two different sources i.e. Math, Mathura and Pili Pokhar, Agra. It was informed that the demand would be fulfilled by erecting one 220/33 KV transmission line, 3*60 mVA GIS substation, double circuit line and two bays.
 - v. Transmission function within the state of Uttar Pradesh is undertaken by M/s Uttar Pradesh Power Transmission Corporation Limited (for short 'UPPTCL'), incorporated in 2006, which is notified as the State Transmission Utility of Uttar Pradesh, vide Notification No. 122/U.N.N.P./24-07 dated 18.07.2007.
 - vi. For an uninterrupted power supply at desired voltage sanctioned by DVVNL, it is required to have a transmission line and hybrid bay erected, before the supply of power at desired voltage level.
 - vii. The entire work is divided into two parts:
 1. InSide Battery Limit (ISBL): It is carried out by the Applicant itself.
 2. OutSide battery Limit (OSBL): It includes construction of transmission towers, transmission line and hybrid bay, which will be undertaken by UPPTCL. For executing this work, UPPTCL will collect the actual costs from the Applicant. Apart from this, UPPTCL will also issue NOC for connecting of ISBL part with its grid by the Applicant, for which supervision of UPPTCL is required and supervision charges are also collected by UPPTCL from the Applicant. The said works shall be carried out on deposit works basis.
 - viii. The ownership of transmission infrastructure developed by UPPTCL remains with UPPTCL and is reflected as fixed assets in the books of UPPTCL. The exclusive rights to operate, manage and maintain the infrastructure shall rest with UPPTCL.
 - ix. The contribution received from the Applicant under the deposit work is reflected separately as financial assistance by UPPTCL in its books of accounts and the interest earned on it or the depreciation claimed on the fixed assets is not taken into consideration for computation of transmission charges by UPPTCL.
3. The applicant has sought advance ruling on following questions as per Form GST ARA-01 -
 1. *Whether the services supplied by UPPTCL to the Applicant are exempt from payment of GST under Entry No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?*
 2. *Subject to above, whether the Applicant is eligible to claim Input Tax Credit (ITC) of the tax paid on services received from UPPTCL?*
 3. *Subject to above, whether the Applicant is liable to deduct Tax at Source (TDS) on the amount paid to UPPTCL for services supplied by it?*
 4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.
 5. The applicant have submitted their interpretation of law as under-
 - (i) Section 97(2)(d) of the UPGST Act provides that the question, on which the advance ruling is sought under this Act, shall be in respect of admissibility of ITC of tax paid or deemed to have been paid. Section 97(2) uses the phrase 'in respect of'. In other words, the questions for advance ruling need not be on the aspects covered under sub-clauses of Section 97(2), but can also be a question

relating to such aspects. Reliance is placed on decision of Hon'ble Supreme Court in Union of India v. Vijay Chand Jain, AIR 1977 SC 1302, wherein it was held that the phrase 'in respect of' admits of a wide connotation and is used in the sense of being 'connected with'.

- (ii) It needs to be determined whether the services supplied by UPPTCL to the Applicant are exempt from payment of tax, in order to determine the eligibility of the Applicant to avail ITC of tax paid thereon, if any. Such question is specifically covered under Section 97(2)(d) of the UPGST Act and thus, an application seeking advance ruling on such question is maintainable.
- (iii) the Applicant and UPPTCL both are PSUs and the liability to deduct TDS under Section 51 arises only on payments made for taxable services. In such a case, thus, the liability of the Applicant to deduct TDS on payments made to UPPTCL can be determined, only if the GST is payable on the supplies made by UPPTCL. The question is specifically covered under Section 97(2)(b) of the UPGST Act, being in respect of applicability of Notification No. 50/2018-Central Tax dated 13.09.2018, which effectuates provisions of Section 51.
- (iv) Section 97(2)(e) covers the aspect of determination of the liability to pay tax on any goods or services or both. Since the Applicant is the recipient of the subject services from UPPTCL, the question of availability of exemption to supply of such services is also covered under Section 97(2)(e).
- (v) The decision of the Advance Ruling Authority is given to an applicant, in relation to supply of goods or services or both. The phrase 'in relation to' is a very wide expression and is used in an expansive sense. In this regard, reliance is placed on decision of Hon'ble Supreme Court in Doypack Systems (Pvt) Limited v. Union of India, 1988 (36) ELT 201 (SC).
- (vi) As per the understanding of the Applicant, the services supplied by UPPTCL under the agreement to carry out deposit work, as agreed upon between the Applicant and UPPTCL, are in nature of transmission of electricity for the reasons furnished hereunder, which are exempt from payment of GST.
- (vii) Entry No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 notifies the following service to be exempted from the levy of GST

S. No.	Chapter, Section or Heading	Description of Service	Rate (Per cent)	Condition
25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility	Nil	Nil

- (viii) The phrase "Electricity transmission and distribution utility" has been defined in Clause 2(z) of para 2 of the Notification to mean the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility
- (ix) The phrase "State Transmission Utility" has been defined in Clause 2(zzj) of para 2 of the Notification to have the same meaning as assigned to it in Section 2(67) of the Electricity Act, 2003.

- (x) Section 2(67) of the Electricity Act defines "State Transmission Utility" to mean the Board or the Government company specified as such by the State Government under Section 39(1).
- (xi) UPPTCL is a State Transmission Utility notified under Section 39(1) of the Electricity Act, and therefore, is squarely covered under the definition of the term "Electricity transmission and distribution utility".
- (xii) The Electricity Act defines the term 'Transmission Licensee' under Section 2(73) as under: "2(73) transmission licensee means a licensee authorized to establish or operate transmission lines".
- (xiii) The Electricity Act also defines the term 'Transmission Line' in the following manner: 2(72) transmission lines means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.
- (xiv) Further, Electricity Act defines 'Distribution Licensees' under Section 2(17) as under: "2(17) Distribution licensees means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply".
- (xv) 'Distribution system' is defined under Section 2(19) of the Electricity Act as under: "2(19) Distribution system means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.
- (xvi) Section 43 of the Electricity Act requires every distribution licensee to mandatorily supply electricity to the owner or occupier of any premises within one month after the receipt of the application. Further, where the supply of electricity requires extension of distribution lines or commissioning of new substations, the distribution licensee shall supply electricity to such premises immediately after such extension or commissioning.
- (xvii) Section 43(2) provides that it shall be the duty of a distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises of the consumer.
- (xviii) Section 46 of the Electricity Act empowers State Commission to authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43, any expense reasonable incurred in providing any electric line or electrical plant used for the purpose of giving that supply.
- (xix) The Electricity Act prescribes for formulation of a State Electricity Regulatory Commission. In pursuance to the above, Uttar Pradesh Electricity Regulatory Commission ('UPERC') has issued various regulations for regulating the generation, transmission and supply of electricity within the state of Uttar Pradesh. UPERC has issued the Electricity Supply Code, 2005 ('ESC'), which enlists the obligations of distribution licensees vis-à-vis the consumers of their area of supply.
- (xx) Clause 4 of the ESC, inter alia, considers the situation, wherein extension of distribution mains or commissioning of new sub-station/enhancement of capacity of sub-station is required for providing a load to the customers. For this purpose, an application is required to be submitted to the distribution

licensee of the area, who will analyse the technical feasibility of the demand and will sanction the same, if feasible. In case any development of distribution system or infrastructure is required, then the distribution licensee will develop the same. The ESC also empowers the distribution company to recover the cost of service line, etc. and system loading charges as a cost of servicing an enhancement of load to the licensee.

- (xxi) It may also be noted that the construction and development of a transmission system within a state is a function entrusted to a transmission company or a state transmission utility. For this purpose, UPERC has prescribed UP Electricity Grid Code, 2007 and Uttar Pradesh Electricity Regulatory Commission (Grant of Connectivity to intra-state Transmission System) Regulations, 2010.
- (xxii) The said Regulations, provides that a distribution licensee, seeking connectivity for new/modified/augmented sub-station or generating station and/or electric line at voltage above 33 kV may make an application to transmission licensee.
- (xxiii) In light of the present transaction, the Applicant requires the enhanced load, for which certain infrastructure is required to be developed by UPPTCL. The statute governing the distribution and transmission of electricity in the State of Uttar Pradesh, authorizes UPPTCL to recover the costs for developing this additional infrastructure for the Applicant. Accordingly, the Deposit Works is an integral part of transmission of electricity services, as without undertaking the said works, it is impossible to transmit electricity at increased load to DISCOMs and the DISCOMs to subsequently supply the same to the Applicant.
- (xxiv) In view of above, it is clear that deposit work undertaken by UPPTCL is integral part of supply of service of transmission of electricity. Such services are specifically covered under Entry No. 25 of Notification 12/2017 and thus, exempt from payment of GST.
- (xxv) As per the understanding of the Applicant, the deposit work undertaken by UPPTCL forms an integral part of the service of transmission or distribution of electricity as discussed above. Assuming, without accepting, that the deposit work does not constitute an integral part of transmission or distribution of electricity, it is still naturally bundled with and ancillary to the principal supply of transmission or distribution of electricity for the reasons given below.
- (xxvi) the providing the electric line and electric plant are elements of supply, which are naturally bundled in the ordinary course of business, with the single supply of transmission and distribution of electricity, which gives the bundle its essential characteristics. Also, deposit work has no independent existence on its own and is supplied in conjunction with transmission and distribution service only. Consequently, the supply is composite in nature. Accordingly, the exemption given to transmission or distribution of electricity shall extend to deposit works undertaken by UPPTCL for the Applicant.
- (xxvii) Reliance is placed on the decision of Hon'ble Gujarat High Court in Torrent Power Ltd. vs. Union of India reported at 2018 (17) GSTL 183 (Guj.) wherein it was held that service provided by the Petitioner are in the nature of composite supply and, therefore, in view of the provisions of Section 8(a) of the CGST Act, the tax liability thereof, has to be determined by treating such

composite supply as a supply of principal supply of transmission and distribution of electricity.

- (xxviii) Reliance is also placed upon the decision of the Hon'ble Rajasthan High Court in M/s. Jodhpur Vidyut Vitran Nigam Limited vs. Union of India & Ors. 2021-VIL-95-RAJ, wherein para 4(1) of Circular No. 34/8/2018-GST dated 01.03.2018 was quashed as being arbitrary, unreasonable and being violative of provision of Section 8 of the CGST Act.
- (xxix) In understanding of the Applicant, if answer to Question No. 1 is in affirmative that the services supplied by UPPTCL to the Applicant are exempt from payment of GST, the Applicant shall not be eligible to avail any ITC thereon.
- (xxx) However, if the answer to Question No. 1 above is in negative, i.e. that the services supplied by UPPTCL to the Applicant are chargeable to GST and not exempt, the applicant is entitled to claim ITC of the tax charged on such Deposit Work as per the understanding of the Applicant as (a) Applicant has received a tax invoice; (b) returns in GSTR-1 are filed by the supplier; (c) service of deposit work is received by the Applicant; (d) tax charged by UPPTCL is paid to the Government; and (e) returns in GSTR-3B is filed by the Applicant.
- (xxxi) Further, the restrictions on claiming ITC, as specified under Section 17 of the UPGST Act, are not applicable to facts of the present case as the property in the infrastructure developed by UPPTCL is retained by UPPTCL only and is not transferred to the Applicant. Such services supplied by UPPTCL are in nature of pure services. Such services, thus, do not qualify as 'works contract' and the restriction of Section 17(5)(c) is not applicable thereon.
- (xxxii) A PSU is a company, where majority i.e. 51% or more of the paid-up share capital is held by the Central Government or State Government or partly by the State Government and partly by one or more State Governments. In the present case, as 51.50% share capital of the Applicant Company is held by the Central Government, it is a PSU.
- (xxxiii) the Applicant, it is not liable to deduct TDS in light of the proviso inserted to Notification No. 50/2018- Central Tax dated 13.09.2018 vide Notification No. 61/2018-Central Tax dated 05.11.2018 w.e.f. 01.10.2018.
- (xxxiv) UPPTCL was incorporated in compliance of the Government of Uttar Pradesh letter no. 293 dated 16.05.2006 and is also owned by the Government of Uttar Pradesh. It is a State Government undertaking established to function as a State transmission Utility in terms of Section 39 of the Electricity Act. Therefore, in light of the above discussion, it is clear that both the Applicant and UPPTCL are PSUs and the service of deposit work is supplied to the Applicant by UPPTCL.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Joint Commissioner, (Corporate Cell – Oil Sector), Commercial Tax, Lucknow vide his letter No. Joint Commissioner (Corporate Cell-Oil Sector)/216/Commercial Tax dated 12.10.2021 forwarded his comments as under-

- (i) as per the contract between UPPTCL and IOCL, there is clear agreement of constructing transmission line by the UPPTCL for IOCL as such it is a bundled supply of construction service of transmission line.

(ii) invoice will be issued by the UPPTCL for supply of construction services and payment would also be made for construction service.

(iii) there is no agreement of supply of electricity by UPPTCL to IOCL in the current agreement.

(iv) supply of electricity which is even not mentioned in invoice and for which payment is not being made can't in any way be treated as bundled supply with the supply mentioned in the invoices.

(v) as such services supplied by UPPTCL to IOCL are not exempt under Entry No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

(vi) applicant is not eligible to claim ITC of the tax paid on supplies received from UPPTCL.

(vii) a proviso was inserted to notification No. 50/2018-Central Tax dated 13.09.2018 vide Notification No. 61/2018-Central Tax dated 05.11.2018 with effect from 01.10.2018 which provided that-

"Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018." (regarding third question).

(viii) the questions raised in application are not pending or decided in the applicants case.

7. The applicant was granted a personal hearing on 09.11.2021 which was attended by Shri S.K. Pathak, DGM Finance, Shri Mukul Jain, Sr. Finance Manager and Shri Narendra Singhvi, Advocate during which they reiterated the submissions made in the application of advance ruling and also furnished copies of following case laws-

(1) State of Karnataka Vs Azad Coach Builders Pvt. Ltd-2010(262)ELT32(SC).

(2) UOI Vs Vijay Chand Jain AIR 1977SC1302

(3) Udai Bhan Singh Vs Board of Revenue UP AIR 1974AL202

(4) Ram Kripal Singh Vs. UP State Road Transport Lko.-19992AWC1147AB

(5) Uoi Vs Brigadier PS Gill 2012(279)ELT321SC

(6) Torrent Power Ltd Vs. UOI-2019(1)TMI1092-GUJRAT HIGH COURT

(7) Jodhpur Vidyut Vitran Nigam Ltd Vs UOI-2021-VIL-95-RAJ

(8) AAR GST WB Order in Re Dipak Kant Mazumdar Dynamic Enginners-2020(35)GSTL363

(9) AAR GST WB Order in Re Daman Techno Waste Management Pvt Ltd-202(35)GSTL413

(10) GST AAR in Re Singh Transport Agency-2019(31)GSTL161

(11) GST AAR in Re Udupi Nirmitti Kendra-2021-TIOL-139

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We find that the applicant has sought advance ruling on following questions-

1. *Whether the services supplied by UPPTCL to the Applicant are exempt from payment of GST under Entry No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?*
2. *Subject to above, whether the Applicant is eligible to claim Input Tax Credit (ITC) of the tax paid on services received from UPPTCL?*
3. *Subject to above, whether the Applicant is liable to deduct Tax at Source (TDS) on the amount paid to UPPTCL for services supplied by it?*

10. We find that from a careful reading of the first question, it is observed that the subject supply is undertaken by UPPTCL and not the applicant. The clause (a) of Section 95 of the CGST Act defines 'advance ruling' as under:-

(a) "*Advance ruling*" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

11. From the above definition of advance ruling, it is evident that an applicant can seek an Advance Ruling only in relation to supply of goods or services or both undertaken or proposed to be undertaken by them. In the instant case, the supply is being undertaken by UPPTCL and the applicant is the only recipient of supply. Accordingly, this question is not liable for admission before this authority and therefore not admitted for consideration on merits of the case.

12. We find that the in second question, the applicant have sought ruling as to whether the applicant is eligible to claim Input Tax Credit (ITC) of the tax paid on services received from UPPTCL and have used prefix 'subject to above' before the question. If an action or event is subject to something, it needs something to happen before it can take place. It means the second question is subject to answer of first question. If the services supplied by the UPPTCL to the applicant are exempt, then there is no question of input tax credit of the same. The question of input tax credit only arises, when the services supplied by the UPPTCL to the applicant are taxable. As we have not admitted the first question for the advance ruling, the answer of second question (being subject to first question) is not being answered because the same is out of purview of authority of advance ruling.

13. We find that the in third question, the applicant have sought ruling as to whether the applicant is liable to deduct Tax at Source (TDS) on the amount paid to UPPTCL for services supplied by it and have used prefix 'subject to above' before the question. If an action or event is subject to something, it needs something to happen before it can take place. It means the third question is subject to answer of first question. If the services supplied by the UPPTCL to the applicant are exempt, then there is no question of deduction of TDS. The question of deduction of TDS only arises, when the services supplied by the UPPTCL to the applicant are taxable. As we have not admitted the first question for the advance ruling, the answer of third question (being subject to first question) is not being answered because the same is out of purview of authority of advance ruling.

14. In view of the above discussions, we pass an order as follows:

ORDER

Question 1. Whether the services supplied by UPPTCL to the Applicant are exempt from payment of GST under Entry No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?

Answer 1 The application is not admitted, under Section 98(2) read with Section 95(a) of CGST Act, 2017 /UPGST Act, 2017 for the reason that the applicant has raised questions as a recipient of service.

Question 2. Subject to above, whether the Applicant is eligible to claim Input Tax Credit (ITC) of the tax paid on services received from UPPTCL?

Answer 2 Not answered as question 1 is not admitted.

Question 3. Subject to above, whether the Applicant is liable to deduct Tax at Source (TDS) on the amount paid to UPPTCL for services supplied by it?

Answer 3 Not answered as question 1 is not admitted.

15. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)

Member of Authority for Advance
Ruling


(Abhishek Chauhan)

Member of Authority for Advance
Ruling

To,
M/s IINDIAN OIL CORPORATION LTD,
TC 39-V, INDIAN OIL BHAWAN,
Vibhuti Khand, Gomti Nagar,
Lucknow-226010

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, 7-A, Ashok Marg, Lucknow, 226001
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-Lucknow I, 12th Floor, Kendriya Bhawan, Aliganj, Lucknow 226024
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Lucknow-I, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.